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BEFORE THE
POLLUTION CONTROL HEARINGS BOARD
STATE OF WASHINGTON

IN THE MATTER OF)
ROSS-SIMMONS HARDWOOD LUMBER)
COMPANY,)
Appellant,)
v.)
SOUTHWEST AIR POLLUTION)
CONTROL AUTHORITY,)
Respondent.)

PCHB No. 1022

FINAL FINDINGS OF FACT,
CONCLUSIONS OF LAW
AND ORDER

This matter, the appeal of a \$50.00 civil penalty for alleged opacity violation of respondent's Section 4.02 of Regulation 1 and WAC 18-04-040(1)(b), came on for hearing before the Pollution Control Hearings Board (Art Brown, Member) convened at Vancouver, Washington on July 26, 1976. William A. Harrison, Hearing Examiner, presided. Respondent elected a formal hearing.

Appellant, Ross-Simmons Lumber Company, appeared by and through its attorney, Mr. G. Tim Martin. Respondent appeared by and through its attorney, Mr. James D. Ladley. Court reporters, Ms. Nora Chin and

1 Ms. Helen Lesnett, recorded the proceedings.

2 Having heard the evidence or read the transcript, having examined
3 the exhibits, and having reviewed the proposed Findings of Fact,
4 Conclusions of Law and Order, and having considered exceptions from
5 respondent and appellant's reply thereto and having denied said
6 exceptions, the Pollution Control Hearings Board makes the following

7 FINDINGS OF FACT

8 I

9 Appellant owned and controlled the lumber mill at Longview,
10 Washington, described in the Notice of Violation at all times relevant
11 to this appeal.

12 II

13 On May 5, 1976, an agent of respondent observed a visible
14 contaminant emanating from a "cyclone" located on appellant's property.
15 The agent commenced a thirty minute opacity observation during which
16 he completed a written record (R-4) of his opacity readings. That
17 report shows seventeen minutes of intermittent visible emissions
18 followed by thirteen minutes of no visible emissions. Within the
19 seventeen minutes, there was recorded three and one-half non-continuous
20 minutes of opacity greater than (the equivalent to) No. 1 Ringelmann.
21 Of this three and one-half minutes, two and one-quarter minutes were
22 recorded at "one and one-half."

23 III

24 The respondent's agent was qualified to read the opacity of
25 visual emissions and was so certified by the Washington State
26 Department of Ecology. This certification is based on successfully

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1 reading the opacity of numerous demonstration smoke plumes at a
2 generally recognized school which teaches that skill. It should be
3 noted, however, that even successful graduation from a plume evaluation
4 school and state certification does not vouch for perfection. Limited,
5 small errors are allowed. Likewise it is not true that a successful
6 graduate need only see an emission to be able to read it. Both parties
7 agree that readings should not be taken from a distance of more than
8 four hundred and forty yards (one-quarter mile). Respondent's agent
9 here involved read the emission from "three hundred to four hundred
10 yards." Neither should opacity readings be taken when the observer
11 is significantly more or less than ninety degrees to the plume. Here,
12 the reading was taken when wind from the west compromised the agent's
13 observation taken from northwest of the plume.

14 IV

15 Appellant has installed a "wet fan" pollution control device to
16 its cyclone which includes an automatic treadle that is actuated by a
17 board going through the planer. When operating properly, this device
18 eliminates visual emissions.

19 V

20 In summary, respondent has presented intermittent opacity readings,
21 the majority of which are "one and one-half" Ringelmann (equivalent).
22 These readings are of such a refined degree of precision as to leave
23 substantial doubt whether they could be confidently obtained even under
24 ideal observation conditions. Appellant, meanwhile, has established
25 (1) the natural de minimis error inherent in opacity reading, (2) the
26 maximum range from which the opacity was read, (3) the fact that cloud

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cover was 100 percent with a light rain falling, (4) that the emission was light, or buff-colored, rather than black, and (5) the unfavorable relationship of observer and plume caused by the wind's direction. From all the above we cannot find as ultimate fact that the visual emissions emanating from appellant's premises exceeded (the equivalent of No. 1 Ringelmann for three minutes.

VI

Any Conclusion of Law hereinafter recited which should be deemed a Finding of Fact is hereby adopted as such.

CONCLUSIONS OF LAW

I

WAC 18-04-040(1)(b), prohibits the emission of an air contaminant, for more than three minutes in any one hour, which exceeds 20 percent opacity (equivalent to No. 1 Ringelmann). This regulation has not been violated by appellant.

II

Alleged violation of Section 4.02 of respondent's Regulation 1 was withdrawn by respondent at hearing.

III

Any Finding of Fact which should be deemed a Conclusion of Law is hereby adopted as such.

ORDER

The violation and \$50.00 civil penalty set out in the Notice of Violation dated May 7, 1976, are each hereby vacated in every respect.

FINAL FINDINGS OF FACT,
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1 DATED this 24th day of September, 1976.

2 POLLUTION CONTROL HEARINGS BOARD

3 Art Brown

4 ART BROWN, Chairman

5 W. A. Gissberg

6 W. A. GISSBERG, Member

7 Chris Smith

8 CHRIS SMITH, Member

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